

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4257 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

THAKORBHAI NARSINGHBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

Mr. Navin Pahwa for MR NL PATEL for Petitioner
Mr. Samir Dave, A.G.P. for Respondent No.1,2 & 3.
Ms. P.J. Davawala for Respondent No. 4

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 05/10/1999

ORAL JUDGEMENT

Heard learned Advocate Mr. Navin Pahwa for the petitioner, learned A.G. P. Mr. Samir Dave for the respondents nos.1, 2 and 3 and Ms. Parinda J. Davawala for the respondent no.4.

1. The detention order dated 7-5-1999 passed by the

respondent no.2-District Magistrate, Surat against the petitioner in exercise of powers conferred under Section 3(2) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act,1980 ("PBM" for short) is challenged in the present petition filed under Article 226 of the Constitution.

2. The grounds of detention produced at Annexure "B" indicate that the petitioner who was found to be the occupier of a piece of land bearing Survey no.414/1/B of Abhava Village Taluka Choriyasi, District Surat was involved in illegal activity of acquiring stolen solvent at cheaper rate from the drivers of the tanker transporting the same from ONGC as well as Reliance Refinery to different destinations. That the petitioner used to purchase the same at the rate of Rs.8/-per litre and sell the same at Rs.10/-per litre without obtaining any licence or permit as required under the control order and making illegal profit by blackmarketing.

The grounds also indicate that on 5-2-1999, a raid was carried out by Civil Supplies Department of Surat on the said land and 1540 litres of petroleum solvent stored in seven different barrels was seized as unauthorized material and criminal proceedings were initiated. It is also indicated in the grounds of detention that the petitioner has been dealing in illegal activity of collecting and selling such solvent with the help of one Shri Arifsha Musa Sha who was found present at the time of raid and his statement was recorded.

The grounds of detention further indicate that subsequently within four days of the said raid, the petitioner was caught red-handed at a place known as Vesu Patia Taluka Choriyasi, District Surat with a tempo bearing registration no.GJ-5-V-378 and a three wheeler bearing registration no.GJ-5-V-5244. That there were 18 barrels naptha petroleum - about 3600 litres in both the vehicles. The petitioner had no pass, permit or licence to possess the same or transport the same, and thereby, criminal proceedings were initiated against the petitioner in the Court of Chief Judicial Magistrate. That on the basis of the material produced before the detaining authority, the detaining authority has come to the conclusion that the petitioner was financing his man Arif sha Musa Sha to indulge into aforesaid blackmarketing activity. The detaining authority has concluded that looking to the past and present activities of the petitioner indulging into blackmarketing, resort to enforcement of general law was insufficient, and as such, in order to prevent the petitioner from continuing

his prejudicial activity, the detention order has been passed.

3. The petitioner has challenged the detention order on numerous grounds. It has been contended on behalf of the petitioner that one Shankerbhai Patel-the brother of the detenu made representation to the District Magistrate as per copy produced at Annexure "C" dated 12-8-1999. The copy of the said representation was also sent to the Economic Advisor, Government of India, Consumer Affairs Department, Shastri Bhavan, New Delhi. The learned Advocate appearing on behalf of the petitioner has submitted that the respondent no.2-District Magistrate, Surat received the said representation on 16-8-1999, however, instead of forwarding the same to the concerned authority of State Government, the respondent no.2 withheld the same on the ground that verification of the said representation was necessary and ultimately sent the same to the concerned authority of the State Government on 20th August, 1999. That the State Government rejected the same on 25-8-1999. It is submitted on behalf of the petitioner that the detention order dated 7-5-1999 having been confirmed by the State Government on 18-5-1999, the respondent no.2-the detaining authority was functus officio and had no jurisdiction to deal with the representation made on behalf of the detenu. That the respondent no.2 withheld the said representation without any reasonable explanation till 20th August, 1999 which amounts to a breach of Constitutional imperative under Article 22(5) , and as such, the continued detention of the detenu has become illegal, and thereby, detention order deserves to be quashed and set aside.

4. As against that learned A.G. P. Mr. Samir Dave relying on the affidavit filed by one Sangeeta Singh, District Magistrate, Surat, dated 25th September, 1999 submitted that as the representation was made by Shankerbhai P. Patel on behalf of the detenu Thakorbhai Narsinghbhai Patel without mentioning his full address it was necessary to verify and investigate about the same, ,and thereby, Supply Inspector Shri Pathan and Shri Vaidya were deputed to verify about the proper address. That report of Supply Inspector was received on 18-8-1999 whereby she learned that said Shankerbhai who has made the representation on behalf of the detenu is not the real brother of the said detenu, however, the representation was forwarded to the State Government with such remark on 20th August, 1999. Shri Samir Dave has vehemently urged that said process of verification and forwarding the representation consumed only four days which is a very short time and cannot be treated as

unexplained or inordinate delay rendering the detention order invalid. To support the submission, Shri Dave has referred to and relied on the observations made by the Supreme Court in the matter of BAI KAMLABEN VS. COMMISSIONER OF POLICE, NAGPUR (1993(3) SCC 384 = 1993(3) JT 666.

5. It is true that in the above stated authority, the Supreme Court has observed that if the Central Government on receipt of representation has called for information from the State Government by wireless message and if 3/4 days time is consumed, delay of said 3/4 days could be said to have been satisfactorily explained and per se it cannot render the detention order invalid. However, in the instant case, the said observation has no application because the representation has been made to the State Government through the detaining authority and no procedure appears to have been prescribed for verification of address of addressee making representation by the detaining authority. On the contrary, after the confirmation of the detention order by the State Government, the detaining authority becomes functus officio and is under obligation to forward the representation to the concerned authority of State Government as soon as possible as required under Article 22(5) of the Constitution. Under the circumstances, the explanation provided by the respondent no.2-detaining authority dated 25th September, 1999 cannot be treated as a satisfactory explanation and in the absence of such explanation, delay even if of four days, in the instant case, is an inordinate delay causing serious prejudice to the valuable fundamental right of the citizen guaranteed under Article 22(5) of the Constitution, and as such, renders the detention order invalid and the continued detention has become illegal.

6. It is also submitted on behalf of the petitioner that representation made to the Central Government vide above stated letter dated 12-8-1999 by the brother of the detenu was received by the Central Government on 16-8-1999. However, the Central Government has rejected the same on 7th September, 1999 which is also inordinate delay rendering the impugned order invalid.

7. On behalf of the Central Government, reliance has been placed on the affidavit filed by one Shri R.C. Dhankar dated 16th September, 1999 wherein it is explained that after the receipt of representation dated 12-8-1999 parawise remarks were called and was received on 7-9-1999 vide letter dated 1-9-1999. That thereafter, after due consideration, the same was rejected on

7-9-1999.

8. The above stated explanation suggested on behalf of the respondent no.4 cannot be accepted as a reasonable explanation for the delay in considering the representation dated 12-8-1999. It may be noted that the Central Government was forwarded the particulars regarding the detention of the detenu after the order was passed, and as such, there was no need to call for parawise remarks. Furthermore, the affidavit of Mr. Dhankar does not disclose at whose instance the parawise remarks were called for. That in the matter of R. PAULSAMY VS. UNION OF INDIA & ANR. (1994) 4 SUPREME COURT CASES 415, the apex Court has observed that unless it is shown that parawise comment has been called for by an empowered authority, the representation construed by the department amounts to have been dealt with in a routine manner without application of mind by the Competent Officer as to whether it was necessary to call for parawise comment or not. Under the circumstances, the time consumed in calling for remarks and dealing with the representation amounts to inordinate delay causing breach of constitutional imperative under Article 22(5) of the Constitution which renders the detention order invalid and continued detention illegal.

9. Shri Pahwa has also referred to and relied on the observations made by this Court in the matter of Spl.C.As. no.2625/99 decided on 9-7-1999 and 7100/98 decided on 5-2-1999 wherein similar observations regarding inordinate delay in considering the representation has been made. In the matter of Spl.C.A. no.4202/99 decided by this Court on 20-8-1999 also similar view is taken.

10. Considering the consensus of above stated authorities, I hold that, in the instant case, non consideration of representation made on behalf of the petitioner-detenu from 12-8-1999 to 20-8-1999 by the State Government and till 1-9-1999 by the Central Government being inordinate delay without any satisfactory explanation has rendered the continued detention of the petitioner illegal, and as such, the impugned order deserves to be quashed and set aside.

11. Since the petition succeeds on the above stated ground alone, it is not necessary to consider the other contentions raised in the petition.

12. On the basis of the foregoing discussion, the petition is allowed. The impugned order dated 7-5-1999

passed by the respondent no.2- District Magistrate, Surat against the petitioner-detenu is hereby quashed and set aside. The petitioner-detenu-Thakorebhai Narsinhbhai Patel is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly.

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